



This document is scheduled to be published in the Federal Register on 05/06/2016 and available online at <http://federalregister.gov/a/2016-10265>, and on FDsys.gov

DEPARTMENT OF DEFENSE

BILLING CODE 5001-06

Office of the Secretary

32 CFR Part 199

[DOD-2013-HA-0053]

RIN 0720-AB59

TRICARE Program; Clarification of Benefit Coverage of Durable Equipment and Ordering or Prescribing Durable Equipment; Clarification of Benefit Coverage of Assistive Technology Devices under the Extended Care Health Option Program

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Correcting amendments.

SUMMARY: The DoD published a final rule on December 31, 2014 (79 FR 78707-78714). This rule makes correcting amendments to the previously published final rule to clarify that only the replacement of lost or stolen rental durable equipment is excluded from coverage. Additionally, in the final rule, DoD mistakenly used asterisks in a paragraph it was revising in its entirety. To correct this mistake and ensure that all revisions are appropriately codified, these correcting amendments set out the full text of the impacted paragraph.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. These correcting amendments are applicable January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Gail L. Jones, (303) 676-3401.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

It has been determined that these correcting amendments are not significant regulatory actions. These correcting amendments do not meet the criteria in these Executive Orders.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been determined that these correcting amendments do not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Pub.L. 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified that these correcting amendments are subject to the Regulatory Flexibility Act (5 U.S.C. 601) because they would not, if promulgated, have a significant economic impact on a substantial number of small entities. These are correcting amendments to the existing regulation.

Pub.L. 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been determined that these correcting amendments do not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, Federalism

It has been determined that these correcting amendments do not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, and Military personnel.

Accordingly, 32 CFR Part 199 is corrected by making the following correcting amendments:

PART 199-- [AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. In § 199.4, paragraph (d)(3)(ii) is revised to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(ii) *Durable equipment*—(A) Scope of benefit. (1) Durable equipment, which is for the specific use of the beneficiary and is ordered by an authorized individual professional provider listed in § 199.6(c)(3)(i), (ii) or (iii), acting within his or her scope of licensure shall be covered if the durable equipment meets the definition in § 199.2 and—

(i) Provides the medically appropriate level of performance and quality for the medical condition present and

(ii) Is not otherwise excluded by this part.

(2) Items that may be provided to a beneficiary as durable equipment include:

(i) Durable medical equipment as defined in § 199.2;

(ii) Wheelchairs. A wheelchair, which is medically appropriate to provide basic mobility, including reasonable additional costs for medically appropriate modifications to accommodate a particular physiological or medical need, may be covered as durable equipment. An electric wheelchair, or TRICARE approved alternative to an electric wheelchair (*e.g.*, scooter) may be provided in lieu of a manual wheelchair when it is medically indicated and appropriate to provide basic mobility. Luxury or deluxe wheelchairs, as described in paragraph (d)(3)(ii)(A)(3) of this section, include features beyond those required for basic mobility of a particular beneficiary are not authorized.

(iii) Iron lungs.

(iv) Hospital beds.

(v) Cardiorespiratory monitors under conditions specified in paragraph (d)(3)(ii)(B) of this section.

(3) Whether a prescribed item of durable equipment provides the medically appropriate level of performance and quality for the beneficiary's condition must be supported by adequate documentation. Luxury, deluxe, immaterial, or non-essential features, which increase the cost of the item relative to a similar item without those features, based on industry standards for a particular item at the time the equipment is prescribed or replaced for a beneficiary, are not authorized. Only the "base" or "basic" model of equipment (or more cost-effective alternative equipment) shall be covered, unless customization of the equipment, or any accessory or item of supply for any durable medical equipment, is essential, as determined by the Director (or designee), for—

(i) Achieving therapeutic benefit for the patient;

(ii) Making the equipment serviceable; or

(iii) Otherwise assuring the proper functioning of the equipment.

(B) *Cardiorespiratory monitor exception.* (1) When prescribed by a physician who is otherwise eligible as a CHAMPUS individual professional provider, or who is on active duty with a United States Uniformed Service, an electronic cardiorespiratory monitor, including technical support necessary for the proper use of the monitor, may be cost-shared as durable medical equipment when supervised by the prescribing physician for in-home use by:

(i) An infant beneficiary who has had an apparent life-threatening event, as defined in guidelines issued by the Director, OCHAMPUS, or a designee, or

(ii) An infant beneficiary who is a subsequent or multiple birth biological sibling of a victim of sudden infant death syndrome (SIDS), or

(iii) An infant beneficiary whose birth weight was 1,500 grams or less, or

(iv) An infant beneficiary who is a pre-term infant with pathologic apnea, as defined in guidelines issued by the Director, OCHAMPUS, or a designee, or

(v) Any beneficiary who has a condition or suspected condition designated in guidelines issued by the Director, OCHAMPUS, or a designee, for which the in-home use of the cardiorespiratory monitor otherwise meets Basic Program requirements.

(2) The following types of services and items may be cost-shared when provided in conjunction with an otherwise authorized cardiorespiratory monitor:

(i) Trend-event recorder, including technical support necessary for the proper use of the recorder.

(ii) Analysis of recorded physiological data associated with monitor alarms.

(iii) Professional visits for services otherwise authorized by this part, and for family training on how to respond to an apparent life threatening event.

(iv) Diagnostic testing otherwise authorized by this part.

(C) *Exclusions.* Durable equipment, which is otherwise qualified as a benefit is excluded from coverage under the following circumstances:

(1) Durable equipment for a beneficiary who is a patient in a type of facility that ordinarily provides the same type of durable equipment item to its patients at no additional charge in the usual course of providing its services.

(2) Durable equipment, which is available to the beneficiary from a Uniformed Services Medical Treatment Facility.

(D) *Basis for reimbursement.* (1) Durable equipment may be provided on a rental or purchase basis. Coverage of durable equipment will be based on the price most advantageous to the government taking into consideration the anticipated duration of the medically necessary need for the equipment and current price information for the type of item. The cost analysis must include a comparison of the total price of the item as a monthly rental charge, a lease-purchase price, and a lump-sum purchase price and a provision for the time value of money at the rate determined by the U.S. Department of Treasury. If a beneficiary wishes to obtain an item of durable equipment with deluxe, luxury, immaterial or non-essential features, the beneficiary may agree to

accept TRICARE coverage limited to the allowable amount that would have otherwise been authorized for a similar item without those features. In that case, the TRICARE coverage is based upon the allowable amount for the kind of durable equipment normally used to meet the intended purpose (*i.e.*, the standard item least costly). The provider shall not hold the beneficiary liable for deluxe, luxury, immaterial, or non-essential features that cannot be considered in determining the TRICARE allowable costs. However, the beneficiary shall be held liable if the provider has a specific agreement in writing from the beneficiary (or his or her representative) accepting liability for the itemized difference in costs of the durable equipment with deluxe, luxury, or immaterial features and the TRICARE allowable costs for an otherwise authorized item without such features.

(2) In general, repairs of beneficiary owned durable equipment are covered when necessary to make the equipment serviceable and replacement of durable equipment is allowed when the durable equipment is not serviceable because of normal wear, accidental damage or when necessitated by a change in the beneficiary's condition. However, repairs of durable equipment damaged while using the equipment in a manner inconsistent with its common use, and replacement of lost or stolen rental durable equipment are excluded from coverage. In addition, repairs of deluxe, luxury, or immaterial features of durable equipment are excluded from coverage.

* * * * *

§ 199.5 [Amended]

3. In § 199.5:

- a. Paragraph (c)(2)(v) is amended by removing the phrase “as well as lost or stolen devices”.
- b. Paragraph (c)(8)(iii) is amended by adding the word “rental” after the word “stolen”, and by removing the second occurrence of “and/or AT devices”.

Dated: April 27, 2016.

Aaron Siegel,
Alternate OSD Federal Register Liaison Officer,
Department of Defense.
[FR Doc. 2016-10265 Filed: 5/5/2016 8:45 am; Publication Date: 5/6/2016]